IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 75 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

FALGUNBHAI CHIMANBHAI PATEL

Versus

PATEL BABULAL HIRALAL

Appearance:

MR HARSHAD J SHAH for Petitioner

MR AM PAREKH for Respondent No. 1

PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 07/02/2001

ORAL JUDGEMENT

#. By this petition, under Article 227 of the Constitution of India the petitioner is praying for quashing and setting aside of the order dated 30.11.1996

of the learned Sessions Judge, Ahmedabad (Rural) at Ahmedabad in Criminal Revision Application No.47 of 1996.

#. The facts of the case in brief are that the respondent No.1 herein was ordered to be detained by Tax Recovery Officer, Ahmedabad for a period of 6 months in Civil Prison under Rule 76(1) of the Second Schedule of the Income Tax Act, 1961 on the ground that the said respondent has failed to pay to the Income Tax Department an amount of Rs.17,90,000/= which was assessed as tax payable by him under the act aforesaid. The order was made against the respondent No.1 on 18.11.1995. The press reporter of Sandesh Daily of the petitioner gathered the aforesaid information through the Income tax Department and a press note about the aforesaid order was sent. A news item was came to be published in Sandesh dated19.1.1996 that the respondent No.1 has not paid to the Income Tax Department an amount of Rs.18,00,000/= being the amount assessed as tax for the year 1988-89 and Department had initiated proceedings against him. In the meanwhile the amount to be recovered from the 1st respondent was reduced to Rs.9,21,000/= but this amount was also not paid by him. Show cause notice was issued and after hearing the submissions made by the respondent No.1 ultimately authorities sentenced him to undergo simple imprisonment for six months. At this stage the petitioner realised that some mistake is committed in publication of the aforesaid news item and in order to rectify the same a corrigendum was published in its issue dated 1.2.1996 in which it was stated that the aforesaid order was made by the Recovery Officer. The respondent No.1 being felt aggrieved of this news item gave notice which is dated 27.1.1996 to the petitioner stating that by publication of the said news item his reputation had been damaged and the Editor of Sandesh-petitioner herein had committed offence of defamation. On receipt of the notice, the petitioner made inquiry to find out whether the news item published on 19.1.1996 contained false news and was really defamatory of the first respondent No.1. The petitioner came to know that order which was referred to in news item was not passed by the Tribunal but it was made by the Recovery Officer and accordingly as what is said earlier corrigendum was published for rectifying the mistake. The respondent No.1 on 20.2.1996 filed Criminal Complaint against the petitioner for the offences punishable under Section 500 of the Indian Penal Code.

After receipt of the summons the petitioner appeared before the learned Judicial Magistrate's Court and submitted an application on 11.1.1996 praying therein for quashing and setting of the process issued against

him. The learned Judicial Magistrate, First Class, Dehgam under its order dated 20.4.1996 recalled the order to issue process against the petitioner. The respondent No.1 preferred revision application in the court of Sessions Judge, Ahmedabad (Rural) against the order of Judicial Magistrate and the revision application was allowed under the impugned order. The learned Trial Court was directed to decide the case against the respondent on merits. Hence this Special Criminal Application.

#. Challenging the legality, proprietary and correctness of the order of the learned Sessions Judge, Ahmedabad (Rural) the learned counsel for the petitioner raised manifold contentions but this petition deserves to be allowed only on the ground that the order of the learned Sessions Judge is wholly cryptic and matter has to be remanded back to it for giving fresh decision it is not necessary as well as desirable to refer to all those contentions, discuss and give the decision thereon.

#. In contra, the learned counsel for the respondent No.1 complainant supported the order of the learned Sessions Judge. He raised manifold preliminary objections also re. the maintainability of the revision before the Sessions Court as well as the grounds against the order of the Judicial Magistrate. For the reasons aforesaid I do not consider it to be appropriate, fit and reasonable to refer all those preliminary objections raised, consider and give decision thereon, otherwise it may adversely effect either of parties before the Sessions's Court. There is yet another reason not to refer and discuss and give any decision on the contentions raised by the learned counsel for the respondent No.1. On remand of the matter learned Sessions Judge, Ahmedabad (rural) has to decide the same after giving notice and opportunity of hearing to the petitioner and there he has right to raise all the contentions legal as well as factual.

#. From the judgment of the learned Sessions Judge, I find that though the reference of the contentions raised by the learned counsel for the petitioner on the merits of the matter has been made, but discussion thereon has not been made nor any decision has been given by the learned Sessions Judge. The learned Sessions Judge has concentrated, proceeded and decided the questions and objections raised by the respondent No.1 before him re. maintainability of the revision application. The learned Sessions Judge has decided after hearing the parties the question of maintainability of revision application in

favour of the accused petitioner but the matter was not considered on merits and without discussing the points raised by the petitioner the matter has been decided and the order of the learned Judicial Magistrate has been quashed and set aside. In the revision application where it pertains to the matter where the accused was discharged the learned Sessions Judge has to decide the matter after considering all the contentions raised by learned counsel for the parties. The matter of the acquittal or discharge whatsoever name may be given by the accused-petitioner, where the order of the learned Magistrate is in his favour, before reversing the same the learned Sessions Judge has to give cogent and justified reasons of his disagreement with the decision of the learned Judicial Magistrate. This what precisely has not been done by the learned Sessions Judge in the present case. The order of the learned Sessions Judge can be termed as a cryptic or non-speaking order. It has to be stated and made clear that this court is not deciding anything on the merits of the matter. The reason is very obvious, it is decided to remand the matter to the revisional court to decide the same afresh and anything said and decided on merits of the matter prejudice likely to be caused to either of the party.

In the result, this petition succeeds and the same is allowed and the order of the learned Sessions Court at Ahmedabad (Rural) in Criminal Revision Application No.47 of 1996 is quashed and set aside. The learned Sessions Judge is directed to restore the revision application of the respondent No.1 to its original number and decide the same on merits on the points other than the point of maintainability of the revision application, which has already been decided and this court has also in agreement with this part of the judgment. The revision application is old one and it is expected of the learned Sessions Judge Ahmedabad (Rural) to expedite its hearing. Rule is made absolute accordingly. In the facts of this case no order as to costs.

(S.K.Keshote, J.)

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